IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3221 OF 2001

Vijay K. Gupta, age 46,
Business, of Bombay Indian
inhabitant, residing at ground floor,
Basement Flat, in Shahbaug No.1,
Peddar Road, Mumbai--26. : Petitioner
(Orig.Defendant no.2)

V/s.

1(a) Nalini Varjeevandas Shah,
age 72, Indian inhabitant of
Bombay, housewife, residing at
Shah Baug, No.3, 2nd floor,
Dr.G. Deshmukh Marg,
Mumbai--26.

1(b) Smt.Vasumati Sumant Daftary,
age 70.

1(c) Dr.Jawahar T. Shah
(Both aged about 70 and 68
respectively) Occ.: Doctor,
residing at Shah Baug No.1,
S.B.Gamadia Road, Mumbai--26,
heirs and legal representatives
of the Orig. Pltff. Smt.Lilavati
T. Shah

2. Jayaben Chandrashekhar Agarwal,
age 77, Household, of Bombay
Inhabitant, residing at Chandan,
Opp. Peddar Road, Mumbai--26. : Respondents
(Resp.No.1(a) to 1(c) Orig.
Pltff.Nos.1(a) to 1(c) -
heirs and legal representatives
of the Orig.Plaintiff, Resp.
no.2/Orig. Defendant no.1

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Mr.R.A. Thorat for the petitioner.

Mr.Aspi Chinoy, Senior Advocate, with Mr.S.A.Sawant,
Mr.H.V.Kode and Mr.Sachin Kadan for resp.nos.1(a) to 1(c).

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CORAM : S.A.BOBDE, J.

DATE : OCTOBER 04, 2007.

ORAL JUDGEMENT:

1. This Writ Petition is directed against the concurrent findings of both the Courts below that the respondents' suit for eviction should be decreed. The Courts below have decreed the suit of the respondent-landlord on the ground that the respondent no.2 Jayaben sub-let the premises to the petitioner in contravention of section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as the "Bombay Rent Act". At the outset, it may be noted that the tenant Jayaben through whom the petitioner claims interest had also challenged the decree by filing Writ Petition no.3099 of 2001 which has been withdrawn on 13.4.2007. It may also be noted that earlier the petitioner and Jayaben had filed common Written Statement before the trial Court. Thereafter, both the parties withdrew the common Written Statement and filed separate Written Statement in which Jayaben stated that the petitioner had been inducted by her by giving a table space on a gratuitous basis.

2. Both the Courts below have, on the basis of evidence on record, come to the conclusion that Jayaben had unlawfully let out the suit premises to the petitioner. The petitioner's main defence was that he is a protected licensee under section 15A of the Bombay Rent Act having been inducted in the premises by Jayaben as a licensee sometime in the year 1971. Therefore, since he was in

possession on 1.2.1973, he claimed protection under the amendment by which section 15A was introduced in the Bombay Rent Act.

3. The short point that falls for consideration in this Writ Petition is whether the Courts below have rightly decreed the suit filed by the predecessor of the respondent nos.1(a) to 1(c) on the ground of unlawful sub-letting. The petitioner's main defence was that he was inducted sometime in the year 1971 under an agreement dated 1.9.1971 and August 1992 at exhibits 10 & 11. The appellate Court has observed that the agreements do not create any licence. In fact, there is no date in one of the agreements. The second agreement does not mention any licence fee, exclusive possession, etc., and therefore, the said documents which are xerox copies were not relied upon at all. More over, the appellate Court has observed that there is no other evidence on record to support the petitioner's case that he was inducted in the suit premises as per the said agreement in the year 1971. The appellate Court further found that the tenant Jayaben has in the subsequent Written Statement stated that the petitioner was inducted sometime in the year 1984 without any consideration and, therefore, he is not entitled to protection under section 15A of the Bombay Rent Act. There is no reason whatsoever to disturb the findings of fact arrived at by the lower appellate Court in this

regard. The said findings are based on cogent and reliable evidence and are not liable to be interfered with.

4. Mr.Thorat, the learned counsel for the petitioner, however, submitted that the decree passed by the lower appellate Court on the ground of sub-letting is not a valid decree since there is no finding that the petitioner had been inducted under a licence for any consideration, consideration being necessary for sub-letting, and, therefore, he cannot be treated as a sub-tenant within the meaning of section 13(1)(e) of the Bombay Rent Act which reads as follows:-

> "**13. When landlord may recover possession**
>
> (1) Notwithstanding anything contained in this Act but subject to the provisions of section 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--
>
> (a) .....
> (b) .....
> (c) .....
> (d) .....
>
> (e) that the tenant has, since the coming into operation of this Act, unlawfully sub-let or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or"

The learned counsel relied on two decisions of the

Supreme Court in Dipak Banerjee v. Lilabati Chakraborty [(1987) 4 SCC 161] and M/s.Delhi Stationers and Printers v. Rajendra Kumar (AIR 1990 SC 1208) for the proposition that a sub-letting means a transfer of an exclusive right to enjoy the property in favour of the third-party and the said right must be in lieu of payment of some compensation or rent. Therefore, if there is no consideration, the decree cannot be said to be a valid decree. It must be remembered that this argument comes from the petitioner who himself had set up a case that he was, in fact, inducted under two agreements for a consideration. The Courts have disbelieved those agreements. His case has been held to be not proved in effect. It is not possible now for the petitioner to argue that the Courts below ought to have rendered a finding that the transfer in the petitioner's favour was for a consideration and in the absence of such a finding, the decree is vitiated. It is clear that as a result of the petitioner's stand, there was no occasion for the Court to consider whether the petitioner's occupation was without consideration. Where it is the defendant's case that he was inducted under an agreement which carried a consideration, there can be no occasion for the landlord to dispute such a claim of the existence of consideration. Obviously, therefore, where this aspect is not in issue, there cannot be such a finding. It is, therefore, not permissible for such a defendant to raise

these contentions in revision petition for the first time.

5. Even otherwise it was pointed out on behalf of the respondents that the eviction does not follow a finding of sub-letting in stricto sensu. It follows the finding that there is an illegal transfer in any other manner. The words "transferred in any other manner" in section 13(1)(e) has been considered widely and will include gratuitous transfer and transfer without consideration. The Gujarat High Court in Sheth Jivaji Rajbhai & Sons v. Patel Hatimbhai Nazarali (1999 Bom.R.C. 409) has observed in para. 17 as follows:-

> "17. In my view, the words 'transfer in any other manner' in Section 13(1)(e) are definitely wider and such transfer will include gratuitous transfer and transfer without consideration. Consequently, if landlord places reliance upon the transfer or assigned tenancy rights by tenant-in-chief in other manner he need not prove existence of valuable consideration for such transfer as is required to be proved for illegal sub-letting. Thus, the trial Court was justified in decreeing the suit on grounds of illegal assignment or transfer of interest in the tenancy by tenant-in-chief to the defendant No.2."

This view of the Gujarat High Court has been approved by the Supreme Court in Mohammedkasam Haji Gulambhai v. Bakerali Fatehali [(1998) 7 SCC 608] wherein the Supreme Court expressly referred to the above passage from the

judgement of the Gujarat High Court and approved the view in the following terms:-

> "13. Clause (e) of Section 13(1) of the Act is couched in the widest terms. There is absolute prohibition on the tenant from sub-letting, assigning or transferring in any other manner his interest in the tenanted premises. There appears to be no way around this subject of course if there is any contract to the contrary between the landlord and the tenant. In a partnership where the tenant is a partner, he retains legal possession of the premises as a partnership is a compendium of the names of all the partners. In a partnership, the tenant does not divest himself of his right in the premises. On the question of sub-letting etc. the law is now very explicit. There is prohibition in absolute terms on the tenant from sub-letting, assignment or disposition of his interest in the tenanted premises."

6. In this view of the matter, there is no merit in the submission that the decree is vitiated on the ground that there is no finding by the Courts below that transfer of interest in the petitioner’s favour was not accompanied by a finding that there was consideration.

7. In the result, the petition fails. The rule is discharged.

8. At this stage, Mr.Thorat, the learned counsel for the petitioner, prays for stay of the execution of the decree. It appears that this Court had granted stay by

an order dated 19.4.2007 to the petitioner only about whose occupation of the premises, there is a dispute. However, the same order of stay may continue for a period of six weeks from today.

S.A. BOBDE, J.